

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

OCT 27 2011

JULIA C. SWANSON, CLERK
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UNITED STATES OF AMERICA,)
)
) Criminal No. 7:04cr00072-4
)
v.) 2255 MEMORANDUM OPINION
)
)
OTIS ANTONIO SMITH.)
) By: Samuel G. Wilson
) United States District Judge

Petitioner, Otis Antonio Smith, a federal inmate proceeding with counsel, filed a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255, challenging his 2005 drug conviction and sentence. Upon review of the record, the court finds that Smith's instant § 2255 motion must be dismissed as successive.

I.

Smith challenges his 262-month sentence for conspiring to possess with intent to distribute 50 grams or more of cocaine base. Court records indicate that Smith previously filed two § 2255 motions regarding the same conviction and sentence which this court denied. See Civil Action Nos. 7:06cv391 (dismissed on its merits) and 7:06cv498 (dismissed without prejudice). This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255(h). As neither Smith nor his counsel have submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive §2255 motion, the court must dismiss his petition as successive.¹

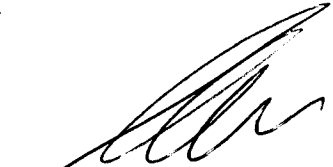
¹ Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion will be included with this notice or are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.

II.

For the reasons stated, the court dismisses Smith's motion as a successive § 2255 motion.

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to the parties.

ENTER: This 26th day of October, 2011.



United States District Judge